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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/783,309

02/20/2004

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EXAMINER

FELTON, MICHAEL J

ART UNIT

PAPER NUMBER

1731

MAIL DATE

DELIVERY MODE

09/05/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/783,309	<b>Applicant(s)</b> ANDERSSON ET AL.	
	<b>Examiner</b> Michael J. Felton	<b>Art Unit</b> 1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2007.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-7 and 11-16 is/are pending in the application.  
4a) Of the above claim(s) 9,10 and 18-26 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,3-7 and 11-16 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 1 and 13 have been amended. Claims 2, 8, and 17 have been canceled.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 3-7, and 11-16 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 3, 4, 5, 6, 7, 11, 12, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray et al. (4,800,903) in view of Perfetti et al. (4,924,883).
5. Regarding claims 1, 3, 4, 5, 6, 11, 12, 13 and 14, Ray et al. disclose a preferred embodiment of a shaped mass of polyethylene filaments that releasably absorbs nicotine (col. 5, line 52-60) that is encapsulated in a nicotine-impermeable polymer film (i.e. non-fibrous) (col. 13, table 12). However, Ray et al. do not disclose the flow resistance of the container.
6. Flow resistance of cigarettes is well known. For instance, Perfetti et al. indicate that, "Typical pressure drop values for smoking articles range from 70 mm to 170 mm, preferably from about 90 mm to about 130 mm of water pressure drop at 17.5 ml/sec of

air flow rate," (col. 4, 15-19). The instant claims 1, 3 and 4 require between 30 mm to 101 mm of flow resistance at 16.6 ml/sec of air flow.

7. It would have been obvious to one of ordinary skill in the art at the time of invention to make a nicotine delivery container have a similar pressure drop to that of conventional cigarettes to make using such a nicotine delivery container similar to the use of conventional cigarettes. In addition, as admitted by the applicant, it would have been well know in the art how to alter the flow rate of the nicotine container without undue experimentation (page 6 of response, 2<sup>nd</sup> paragraph).

8. Regarding claim 7, Ray does not disclose that any sintering of the filaments is undertaken (instant application claim 7).

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray et al. (4,800,903) and Perfetti et al. (4,924,883) as applied to claim 1 above, in further view of the applicants prior art. Ray et al. and Perfetti et al. do not disclose production of fibers or filaments by spinning and or extrusion. However, Ray et al., indicate that the plug containing nicotine, "may be produced mechanically and may also be a mass of filaments," (Col 5, line 52-60). The applicant has admitted that making fibers or filaments is known in the prior art by saying, "The fiber or filaments may be manufactured in a number of different ways known in the art, such as through extrusion and spinning," (paragraph 0039). It would have been obvious to one of ordinary skill in the art at the time of invention to use spinning and/or extrusion to make the fibers or filaments used in the invention.

10. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray et al. (4,800,903) and Perfetti et al. (4,924,883) as applied to claim 1 above, in further view of Rivers, Jr. (2,818,868). Although Ray et al. disclose using polyethylene terephthalate (PET) film for enclosing the fiber with absorbed nicotine, using PET as a fiber or filament is not disclosed. However, Rivers, Jr. discloses that PET can be used as a fiber in cigarette filters. In this similar application nicotine is retained and released by the filter made from PET during combustion of the tobacco. It would have been obvious to one of ordinary skill in the art at the time of invention to use PET and other fibers that have been shown capable of releasably retaining nicotine in the present invention.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Felton whose telephone number is 571-272-4805. The examiner can normally be reached on Monday to Friday, 7:30 AM to 4:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJF

  
STEVEN P. GRIFFIN  
SUPERVISORY PATENT EXAMINER  
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